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From: "Nepstad, Michael G SPK"
Sent: Wed 8/26/2009 6:49:10 PM
Subject: SPK Regulatory Recommendations for the EIS/EIR

The purpose of this email is to provide the Bay Delta Conservation Plan's (BDCP) BDCP Environmental Compliance Team (BECT) information, analyses, and processes which appear necessary to support the USACE permit decisions for those components of the BDCP for which the applicants are seeking permits and which constitute complete projects based upon my current understanding of the BDCP.

The USACE has jurisdiction over the BDCP under section 10 of the Rivers and Harbors Act of 1899 (section 10), section 14 of the Rivers and Harbors Act of 1899 (section 408, so called as it's also listed as 33 USC 408), and section 404 of the Clean Water Act (section 404).

The topics within this email are specific to section 10 and 404 permit decision needs.

The USACE is a cooperating agency under the National Environmental Policy Act for the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) which is being prepared for the BDCP by the BECT. I am looking forward to working with the applicants to ensure the EIS/EIR prepared for the BDCP is adequate in both process and content to support the permit decisions of the USACE. I expect the topics discussed below will be further discussed at the next BECT meeting or another meeting to ensure the right information, analyses, and processes are incorporated into the EIS/EIR to support the permit decisions of the USACE. Without the right information, analyses, and processes incorporated into the EIS/EIR, additional NEPA processes and documentation would be necessary for completion of the permit decisions of the USACE.

Recommendations for the EIS/EIR

- 1) Chapters 4 (Affected Environment and Environmental Consequences), 6 (CEQA Effects of the Proposed Project and Alternatives), and 7 (Cumulative Effects Analysis) of the EIS/EIR should all have the same section headings.
- 2) Chapter 4 should be split into two chapters, Affected Environment and Environmental Consequences, to improve the comparability of the affected environment discussion with the analyses in Chapters 4, 6, and 7 of the EIS/EIR.
- 3) Waterborne recreational and commercial navigation, terrestrial threatened and endangered species, aquatic threatened and endangered species, water supply (private/non-applicant diversions) and conservation, and each of the public interest factors listed in 33 CRF 320.4(a)(1) should each have its own section in Chapters 4, 6, and 7 of the EIS/EIR, and each such section identified on the table of contents.
- 4) The alternatives analysis in the public draft EIS/EIR should be done in accordance with the section 404(b)(1) Guidelines.

5) For climate change, Chapter 5 (Climate Change) should contain an analysis of how the BDCP would contribute to climate change, and should contain an analysis on how climate change would contribute to the cumulative impacts of the BDCP. This same information should be in the Air Quality section of Chapter 4 and in Chapter 7.

6) Each USACE Federal Project impacted by the BDCP should have its own separate section in Chapters 4, 6, and 7 of the EIS/EIR, and each such section identified on the table of contents. In addition, each USACE Federal Project impacted by the BDCP should have its own separate appendix of the EIS/EIR, where in all the analyses of impacts are consolidated.

7) A list stating how and where each of the components of the conclusions and the reasonable and prudent alternatives from the December 15, 2008 OCAP jeopardy biological opinion from the USFWS and the June 4, 2009 OCAP jeopardy biological opinion from the NMFS for the CVP and SWP has been addressed. An explanation and supporting analysis needs to be provided for items not addressed. This list should be an appendix to the EIS/EIR and the Biological Assessment specific to the USACE permit decision.

8) A list stating how and where each of the determinations made since December 15, 2008 by the Regional Real-Time Decision Making and Information Sharing Data Assessment Team, Integrated Water Operations and Fisheries Forum, Operations and Fishery Forum, B2 Interagency Team, Smelt Working Group, Delta Smelt Risk Assessment Matrix (DSRAM), Longfin Smelt Risk Assessment Matrix (LSRAM), Salmon Decision Process, Delta Cross Channel Project Work Team, the Gate Operations Review Team, and any other applicable teams, have been addressed. An explanation and supporting analysis needs to be provided for items not addressed. This list should be an appendix to the EIS/EIR and the Biological Assessment specific to the USACE permit decision.

9) Ensure that the USACE has sufficient information (a complete application, as listed in 33 CFR 325.1(d)(1)-(10), including an application for an individual permit) for the issuance of a public notice concurrent with the issuance of the public draft EIS/EIR.

Mike